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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,851	12/03/2004	Alfons Bockmann	MY-27PCT	7267
40570	7590	08/03/2007		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER O HERN, BRENT T	
			ART UNIT	PAPER NUMBER
			1772	
			MAIL DATE	DELIVERY MODE
			08/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,851	Applicant(s) BOCKMANN ET AL.	
	Examiner Brent T. O'Hern	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3 DEC 2004, OCT 24 2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Claim 1 recites the limitation "the container material" in lines 11-12, "the container contents" in line 12, "the coating" in lines 15-16; claim 3 recites the limitation "the other" in line 4, and claim 6 recites the limitation "the thickness" and "the finished coating (30)" in line 3. There is **insufficient antecedent basis** for these limitations in the claims.
3. Examiner's Note: Applicant is advised to consider deleting all reference numerals or in the alternative closely review the claims now pending and amended to be sure the reference numerals used in each instance corresponds to the text.
4. Regarding claim 1, the phrase "**and the like**" in line 3 renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).
5. Regarding claim 1, the phrase "**such as**" in line 3 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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6. A **broad range** or limitation together with a **narrow range** or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, **claim 6** recites the broad recitation **0.003 mm to 0.3 mm**, and the claim also recites **0.007 mm to 0.01 mm** which is the narrower statement of the range/limitation.

Clarification and/or correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Barsotti (WO 00/49072).

Regarding claims 1, 2 and 5, Barsotti ('072) teaches a plastic container made of polyolefins, with a coating on an exterior and/or interior surface that has oxygen barrier properties with the coating comprising epoxy resins or amine adducts (*See p. 4, ll. 19-27, p. 4, ll. 10, ll. 10-14, p. 6, ll. 1-8 and p. 7, ll. 17-28 a plastic container with the above coating composition.*).

The phrase "for the packaging and long-term storage of food products and the like, such as salads, fruit extracts, beverages in disposable portion packs for beverage vending machines, toothpaste, etc., wherein, to reduce the amount of oxygen penetrating the closed plastic container (10, 20), the plastic container is provided with a coating that hinders the diffusion of oxygen" in claim 1, lines 2-7 is deemed to be a statement with regard to the **intended use** and is not further limiting in so far as the structure is concerned (*see MPEP 2111.02*).

The phrase "and the coating (30) is largely adapted to the container material and possibly to the container contents with respect to its properties, for example, its mechanical strength, thermal expansion, and chemical resistance to the contents of the container, such that the coating materials used for the coating are based on modern epoxy resins or amine adducts" in claim 1, lines 11-16 is not given any patentable weight as it is interpreted as **optional** language and does not positively set forth any structural limitations.

The phrases "wherein the coating (30) is applied by spray coating and/or dip coating only the outer surface or the entire freely accessible surface of the plastic container (10, 20) in one operation" in claim 2, lines 1-5 and "wherein, after it has been applied to the container surface (15, 25), the coating (30) is subjected to an

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aftertreatment that consists, for example, of heating or UV irradiation, e.g., for the purpose of drying it or curing it" in claim 5, lines 1-6 are **process limitations** in a product claim and hence not given any patentable weight since patentability of a product does not depend on its method of production (see *MPEP* § 2173.05(p)).

Regarding claim 3, Barsotti ('072) teaches a plastic container wherein the coating is composed of at least two individual layers that are applied one over the other (See *p. 4, ll. 19-27*).

The phrase "preferably consist of different materials" in claim 3, lines 4-5 is **optional**, thus not limiting.

Regarding claim 6, Barsotti ('072) teaches wherein the thickness of the finished coating (30) varies from about 0.003 mm to 0.03 mm (See *p. 27, l. 27 to p. 28, l. 3 wherein 0.3 mil equals 0.00762 mm.*).

Regarding claim 7, Barsotti ('072) teaches wherein the surface (15, 25) to be coated is pretreated (See *p. 7, ll. 33 to p. 8, l. 4*).

The phrases "wherein the container surface (15, 25) to be coated is pretreated, e.g., by flame treating, before it is coated and is then, for example, fat-free and/or dust-free and/or roughened" in claim 5, lines 1-6 are **process limitations** in a product claim and hence not given any patentable weight since patentability of a product does not depend on its method of production (see *MPEP* § 2173.05(p)).

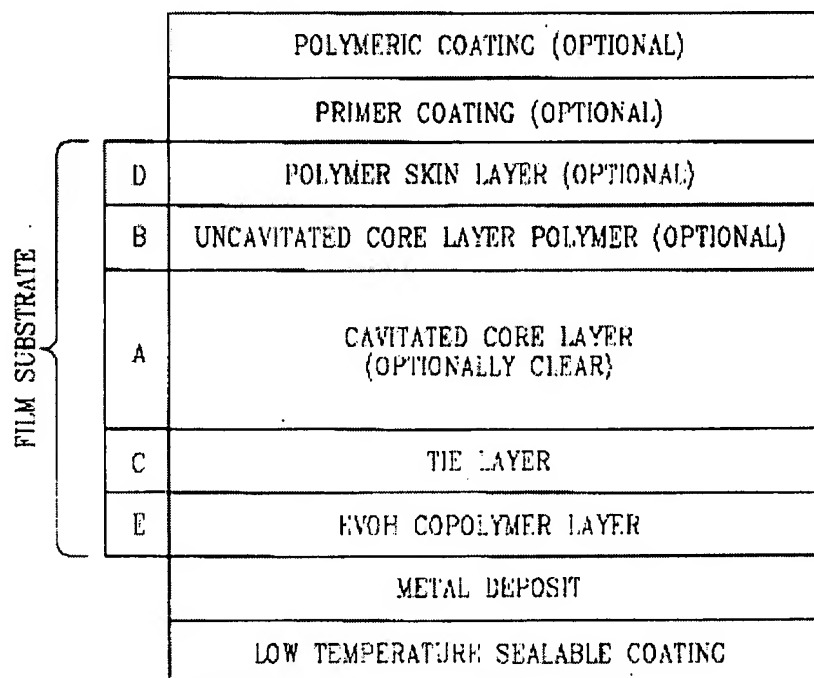
The phrase "before it is coated and is then, for example, fat-free and/or dust-free and/or roughened" in claim 7, lines 4-6 is **optional**, thus not limiting.

7. Claims 1 -5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Touhsaent et al. (US 5,827,615).

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Regarding claims 1, 2 and 5, Touhsaent ('615) teaches a plastic container made of polyolefins, with a coating on an exterior and/or interior surface that has oxygen barrier properties with the coating comprising epoxy resins or amine adducts (*See FIG on the front page of the patent, col. 2, ll. 23-58, col. 7, ll. 40-49, a plastic container with the above coating composition.*).

FILM CROSS SECTION



Regarding claim 3, Touhsaent ('615) teaches wherein the coating is composed of at least two individual layers that are applied one over the other (*See FIG on the front page of the patent and col. 2, ll. 23-58.*).

Regarding claim 4, Touhsaent ('615) teaches wherein one of the individual layers is a layer produced by metallization (*See col. 5, ll. 21-25 and 65-67.*).

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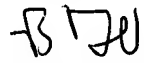
Regarding claim 7, Touhsaent ('615) teaches wherein the surface (15, 25) to be coated is pretreated (See col. 5, ll. 26-32.).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on M-Th, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Brent T O'Hern
Examiner
Art Unit 1772
July 20, 2007


NASSER AHMAD
PRIMARY EXAMINER 7/31/07